IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1294 OF 2005

Union of India. .. Petitioner .

vs.

Mohan K. Nair. .. Respondent .

Mr. Suresh Kumar for petitioner .

None for respondent .

CORAM : S.U. KAMDAR, J.

DATE : 24th April, 2006.

P.C.:

. The present petition challenges the order passed by the Industrial Tribunal dated 24.6.2004. By the impugned order the Industrial Tribunal has granted retrenchment compensation to the employee at the rate of Rs. 750/- per month for a period of five years totalling to Rs. 49,500/- plus salary of 10 months during which period he has worked at the rate of Rs. 750/- per month totalling to Rs. 57,000/-.

2. There is no dispute that the respondent was appointed in the service by an appointment letter

dated 10.2.1994 and his services are supposed to have been terminated by a letter dated 13.12.1994. The only ground on which his services are terminated is that his appointment is irregular and his appointment has not been approved by the higher officer. Against the said order of termination the respondent preferred a reference before the CGIT who has passed the impugned order granting aforesaid compensation. The learned counsel for the petitioner has submitted that the appointment was bad in law because the post did not exist and, therefore, he is not lawfully appointed. Secondly, it has been contended that the Tribunal could not have awarded five years salary at the rate of Rs. 750/- per month amounting to Rs. 49500/- in absence of granting of any relief of reinstatement by the Tribunal.

3. In so far as the petitioner's aforesaid contentions are concerned, in my opinion, there is no merit. Firstly Mr. C.P. Singh, the Principal Kendriya Vidhyalaya was examined and in his evidence he has admitted that he has signed the appointment order dated 10.2.1994. He has also admitted that the services of the workman were termination on 13.12.1994 by him because his appointment was not approved. In my opinion, once the appointment is effected the services cannot be terminated without following proper procedure of law either of

retrenchment or conducting of an enquiry for termination. In the present case, neither has been done though the appointment of the said teacher was effected. It is an evidence that the teacher has worked for more than 240 days and thus he has become a permanent employee. In that view of the matter, the Tribunal was justified in holding that the termination was illegal and the payment of salary and retrenchment compensation has rightly been awarded. The learned counsel for the petitioner submitted that the respondent has not worked except for the period from 10.2.1994 and 12.12.1994. It is true and accordingly the Tribunal has only given salary for the aforesaid period during the period during which he has worked. The learned counsel for the petitioner has submitted that even a retrenchment compensation ought not to have been awarded because he has not worked for the said period. In so far as the aforesaid contention is concerned, I am of the view that it is not necessary that person must be working for a period for which retrenchment compensation has been awarded. The learned counsel for the petitioner has further submitted that the the teacher was working and, therefore, he should not have been paid the retrenchment compensation. On the basis of the evidence on record it has been found that the respondent was working in a mess as night time job and was getting Rs. 167/- p.m. as wages. The

Tribunal has held that the petitioner was willing to work but no work was offered and therefore awarded the aforesaid amount. In my opinion, the aforesaid order does not call for any interference in writ jurisdiction under Article 226 of the Constitution of India. The petition accordingly fails and the same is dismissed. However, there shall be no order as to costs.